

DISCLOSURE OF INFORMATION

(Please print legibly or type and complete all pertinent items. Enter "N/A" (Not Applicable) or "Unknown" where appropriate.)

PART 1: BACKGROUND INFORMATION

1. Name of person seeking OSC action ("Complainant"): Mr. () Ms. (✓) Mrs. () Miss ()

Ellen Gallagher

2. Status:

Current Federal Employee (✓) Applicant for Federal Employment ()
Former Federal Employee () Other (please specify):

3. Contact Information:

Home or mailing address:

Telephone number(s):

(Home)

(Office) Ext.

(Cell)

Fax number:

E-mail address:

4. Current position, title, series, and grade:

5. Agency Name: DHS Office for Civil Rights + Civil Liberties (CRCL)

6. Agency Address:

131 M St SW
WASH DC 20528

7. How did you first become aware that you could file a disclosure with OSC?

OSC Brochure () OSC Poster () OSC Speaker () OSC Web Site (✓)
Agency Personnel Office () Union () Co-worker () News Story ()
Other (please describe):

Date (approximate):

AUG. 2014

8. If you are filing this complaint as a legal or other representative of the person making a disclosure, please supply the following information:

Name / title of filer: Mr. () Ms. () Mrs. () Miss ()

9. Contact Information:

Home or mailing address:

Telephone number(s): () () (Home)

() () (Office) Ext. ()

Fax number: () ()

E-mail address: ()

PART 2: DETAILS OF YOUR DISCLOSURE

1. I know about the information I am disclosing here based on (check all that apply):

I have personal and/or direct knowledge of events or records involved (☒)

Other employees have told me about events or records involved (☐)

Other source(s) (☐)

(please explain):

2. Please identify the U.S. government department or agency involved in your disclosure:

DHS Immigration + Customs Enforcement + CRCL

3. Please identify the organizational unit of the department or agency involved:

" "

4. Address of the organizational unit:

ICE = 500 12th St, SW, Wash DC 20536 ; CRCL = (see Pt 1, # 6)

5. Please identify the type of agency wrongdoing that you are alleging (check all that apply). If you check "violation of law, rule, or regulation," please provide, if you can, the particular law, rule or regulation violated (by name, subject, and/or citation).

Violation of law, rule, or regulation (☒) (please specify): ^{Including but not limited to —} DHS/ ^{Performance Based} ICE Directive 11065.1; ICE NATL ^{DHS/} Detention Standards (PBNDs); CRCL Directive 046-01-001; 6 U.S.C. § 345(a)(4)+(6).

Gross mismanagement (☐) Gross waste of funds (☐) Abuse of authority (☒)

Substantial and specific danger to public health (☒)

Substantial and specific danger to public safety (☒)

6. Please describe the agency wrongdoing that you are disclosing, indicating how the agency's actions fit within the type(s) of wrongdoing that you checked in item 5. *(Be as specific as possible about dates, locations and the identities and positions of all persons named. Also, please attach any documents that might support your disclosure. Continue on a separate sheet of paper if you need more space.)*

Please see the attached 2-page summary.

I have and am willing to provide through appropriate channels the various documents, reports, email communications and cases involving segregated detainees.

The purpose of this complaint is to request investigation through the Office of Special Counsel into the use administrative and disciplinary segregation for detainees in immigration custody. Particularly with regard to detainees with "special vulnerabilities," the Performance-Based National Detention Standards (PBNDS) in conjunction with ICE Directive 11065.1, "Review of the Use of Segregation for ICE Detainees," require that segregation be used "only as a last resort and when no other viable housing options exist." ICE's PBNDS (2011) related to "Medical Care" are designed to ensure that "detainees have access to appropriate and necessary medical, dental and mental health care, including emergency services." Non-dedicated Intergovernmental Service Agreement (IGSA) facilities also "must...meet or exceed the intent represented by" the requirement that "Medical facilities within the detention facility shall achieve and maintain current accreditation with the standards of the National Commission on Correctional Health Care (NCHC), and shall maintain compliance with those standards."

Implementation of these requirements and standards necessitates a range of resources applied in general and other modified custodial settings that ICE reports is lacking. This has resulted in segregation being used across detention facilities as a first, not last resort, with "sentences" of up to 60 consecutive days, or more. Segregation, also termed "twenty-four hour lockdown," is routinely applied to civil immigration detainees for: "Violations of the Rules/Regulations; Inappropriate Behavior; Self-Threatening Behavior; Posing a Threat to the Security of the Facility; and To Avoid Conflict Between Yourself and Others." Some groups, including detainees with serious mental illness or a prior sex offense, are placed automatically in long-term administrative segregation. Others move chronically back and forth from the general population to administrative or disciplinary segregation, with periodic, crisis-oriented admissions to psychiatric hospitals punctuating their return to the same disturbing cycle. CRCL has documented through the use of clinical experts specific and systemic failures with regard to the provision of meaningful or adequate mental health assessments and treatment, including the improper administration of psychotropic medications, for detainees placed in segregation.

In accordance with ICE Directive 11065.1, administrative segregation is "a non-punitive form of separation from the general population for administrative reasons." It is authorized "only as necessary to ensure the safety of the detainee, facility staff, and other detainees; the protection of property; or the security or good order of the facility, and therefore should be for the briefest term and under the least restrictive conditions practicable, consistent with the rationale for placement." Disciplinary segregation is "a punitive form of separation from the general population that is authorized only pursuant to the order of a facility disciplinary panel, following a hearing in which the detainee is determined to have committed serious misconduct in violation of a facility rule, and only consistent with the Disciplinary Severity Scale from the applicable ICE standards, and only when alternative dispositions would inadequately regulate detainee behavior." Detainees with special vulnerabilities are defined within ICE Directive 11065.1 as including, "those who are known to be suffering from mental illness or serious medical illness; who have a disability or are elderly, pregnant or nursing; who would be susceptible to harm in general population due in part to their sexual orientation or gender identity; or have been victims – in or out of ICE custody – of sexual assault, torture, trafficking or abuse. As indicated previously, placement in administrative segregation for detainees with special vulnerabilities is permitted, "only as a last resort and when no other viable housing options exist." The Directive further states, "A detainee's age, physical disability, sexual orientation, gender identity, race or religion may not provide the sole basis for a decision to place the

detainee in involuntary segregation.” Nor should detainees with a medical or mental illness, or identified as being a suicide risk or on a hunger strike remain in segregation if “the IHSC [Immigration and Customs Enforcement Health Service Corps] determines that the segregation placement has resulted in deterioration of the detainee’s medical or mental health, and an appropriate alternative is available.”

ICE Directive 11065.1 requires Headquarters oversight and review related to the use of segregation in detention facilities. ICE Enforcement and Removals Operations (ERO) Custody Management Division (CMD) compiles a weekly Segregation Report based on field data to track detainees held in segregation for 14 days (either consecutive or within a 21-day period), 30 days, and at every 30 day interval thereafter, or within 72 hours for detainees with a special vulnerability. Each Segregation Report typically describes up to 200 detainees, the vast majority of whom are unrepresented, being placed into disciplinary or administrative segregation for reasons that range from “suicide risk” to “mental illness” to “protective custody: criminal offense,” to “pending investigation of disciplinary violation,” “disciplinary” or “medical: other.” Given reporting restrictions, it is difficult to know exactly how many detainees in immigration custody are placed in segregation every day, and for what specific or cumulative timeframe. While IHSC staffs 16 of 204 detention facilities nationwide, they recognize that severe resource shortages have resulted in a polarized approach to managing detainees. Essentially, where a detainee’s behavior or characteristics are perceived to be disruptive, evidence of noncompliance, or a threat to the general population or “good order” of the facility, segregation serves as a default remedy. Administrative and disciplinary segregation “sentences” are further marked by imposition of the maximum time permitted under the PBNDS, even for initial, isolated or minor transgressions without meaningful consideration or application of less restrictive alternatives. The use of restraints to handcuff, shackle and strip-search detainees placed for lengthy periods in administrative or disciplinary segregation is another feature of this problem.

Since entering on duty at CRCL in December 2013, I have attempted to document and elevate within and beyond that office my concern regarding the widespread and at times extreme use of solitary confinement for detainees in immigration custody. More specifically, I have identified what I believe to be an ongoing violation of existing policies and procedures that require the use of less restrictive alternatives prior to imposing administrative or disciplinary segregation and raised based on the Department of Justice’s “Investigation of the State Correctional Institution at Cresson and Notice of Expanded Investigation” (May 31, 2013) and other authorities risks regarding cruel and unusual punishment.

In a meeting with CRCL staff on July 10, 2014, I recommended that the Officer brief Secretary Jeh Johnson on this topic, and also share information on the use of segregation to inform the DHS Office of the Inspector General’s open report (OIG-11-62) on “Management of Mental Health Cases in Immigration Detention.” Because CRCL leaders declined to pursue either course of action, following consultation with DHS Ethics Counsel, I notified the Deputy Secretary of my concerns via written memorandum on July 23, 2014. That notification included the vast majority of what is included here, as well as five illustrative cases with names and A-numbers of mentally ill and suicidal detainees subject to administrative and disciplinary segregation. To date, I am unaware of any action taken to address the information conveyed by me to the Deputy Secretary on July 23, 2014.

PART 3: OTHER ACTIONS YOU ARE TAKING ON YOUR DISCLOSURE

1. I have previously disclosed (or am disclosing) the violations alleged here to (complete all that apply):

☐ Inspector General of department / agency involved Date: / /

☒ Other office of department / agency involved Date: 7 / 10 / 14
(please specify):

Refer to information provided in Pt. 2, Q6.

☐ Department of Justice Date: / /

☐ Other Executive Branch / department / agency Date: / /
(please specify):

☐ General Accounting Office (GAO) Date: / /

☐ Congress or congressional committee Date: / /
(please specify member or committee):

☐ Press / media (newspaper, television, other) Date: / /
(please specify):

2. If you disclosed the information reported here through any other channel described in question 1, above, what is the current status of the matter?

As indicated in Pt. 2, Q6, I have sought through supervisory channels within DHS and in consultation with the Office of General Counsel Ethics staff to elevate this matter to the Immediate Office of the Secretary.

PART 4: CONSENT, CERTIFICATION, AND SIGNATURE

Do you consent to the disclosure of your name to others outside the Office of Special Counsel if it becomes necessary in taking further action on this matter?

I consent to disclosure of my name:

Signature

Date

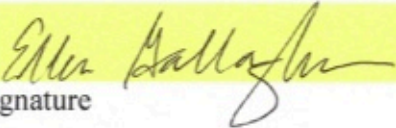
I do not consent to disclosure of my name: *

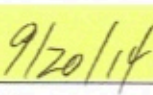
Signature

Date

** At a future date, I may alter this request to permit use of my name.*

I certify that all of the statements made in this complaint (including any continuation pages) are true, complete, and correct to the best of my knowledge and belief. I understand that a false statement or concealment of a material fact is a criminal offense punishable by a fine of up to \$10,000, imprisonment for up to five years, or both. 18 U.S.C. § 1001.


Signature


Date

PART 5: PRIVACY ACT / PAPERWORK REDUCTION ACT STATEMENTS

Routine Uses. Limited disclosure of information from OSC files is needed to fulfill OSC's investigative, prosecutorial and related responsibilities. OSC has described 18 routine uses for information in its files in the *Federal Register* (F.R.), at 66 F.R. 36611 (July 12, 2001), and 66 F.R. 51095 (October 5, 2001). A copy of the routine uses is available from OSC on request. A summary of the routine uses appears below.

OSC may disclose information from its files in the following circumstances:

1. to disclose that an allegation of prohibited personnel practices or other prohibited activity has been filed;
2. to disclose information needed by the Office of Personnel Management (OPM) for inquiries involving civil service laws, rules or regulations, or to obtain an advisory opinion;
3. to disclose information about allegations or complaints of discrimination to entities concerned with enforcement of anti-discrimination laws;
4. to the MSPB or the President, when seeking disciplinary action;
5. to the involved agency, MSPB, OPM, or the President when OSC has reason to believe that a prohibited personnel practice has occurred, exists or is to be taken;
6. to disclose information to Congress in OSC's annual report;
7. to disclose information to third parties (without identifying the complainant unless OSC has the complainant's consent) as needed to conduct an investigation; obtain an agency investigation and report on information disclosed to the OSC whistleblower disclosure channel; or to give notice of the status or outcome of the investigation;
8. to disclose information as needed to obtain information about hiring or retention of an employee; issuance of a security clearance; conduct of a security or suitability investigation; award of a contract; or issuance of a license, grant, or other benefit;
9. to the Office of Management and Budget (OMB) for certain legislative coordination and clearance purposes;

10. to provide information from an individual's record to a congressional office acting pursuant to the individual's request;
11. to furnish information to the National Archives and Records Administration for records management purposes;
12. to produce summary statistics and work force or other studies;
13. to provide information needed by the Department of Justice for certain litigation purposes;
14. to provide information needed by courts or adjudicative bodies for certain litigation purposes;
15. to disclose information to the MSPB as needed in special studies authorized by law;
16. for coordination with an agency's Office of Inspector General or comparable entity, to facilitate the coordination and conduct of investigations and review of allegations;
17. to news media or the public in certain circumstances (except when the Special Counsel determines that disclosure in a particular case would be an unwarranted invasion of personal privacy); and
18. to the Department of Labor and others as needed to implement the Uniformed Services Employment and Reemployment Rights Act of 1994, and the Veterans' Employment Opportunities Act of 1998.

Purposes, Burdens, and Other Information. An agency may not conduct or sponsor a collection of information, and persons may not be required to respond to a collection of information, unless it (a) has been approved by OMB, and (b) displays a currently valid OMB control number. The information in this form is collected pursuant to OSC's legal responsibility (at 5 U.S.C. § 1213) to receive disclosures from current or former federal employees, or applicants for federal employment, alleging possible wrongdoing by federal agencies. The information will be used by OSC to determine whether the facts establish that: (a) OSC has jurisdiction over the subject of the disclosure; (b) there is a substantial likelihood that the facts indicate a violation of law, rule, or regulation; gross mismanagement; a gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety; and (c) referral for investigation by the agency involved, or other appropriate action is warranted. The reporting burden for this collection of information is estimated to be an average of one hour per response, including the time for reviewing instructions, searching existing data sources, gathering the data needed, and completing and reviewing the form.

Please send any comments about this burden estimate, and suggestions for reducing the burden, to the U.S. Office of Special Counsel, Legal Counsel and Policy Division, 1730 M Street, N.W. (Suite 201), Washington, DC 20036-4505. Use of this form to report disclosures of information is not mandatory. As indicated in part 4 of the form, filers may request that OSC maintain their name in confidence.